IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE
LPA No. 68 of 2006

MOHUDDIN LAL MOHAMMED SIDDIQUI . Appellant
V/S
PANDURANG JAGANNATH THORAT
AND OTHERS ..... respondents

Mr. A. A. Mirza for appellant .
Ms. Priti Mason i/b. Bankim Desai for respondent no.3.

CORAM: R.M.S.KHANDEPARKAR
&
MRS. ROSHAN DALVI JJ.

DATE:25/04/2006

P.C.:

1. Heard. This appeal has been filed against the judgment dated 3rd March 2006 passed by the learned Single Judge in First Appeal No. 1069 of 1987 whereby the learned Single Judge has dismissed the appeals filed by the builder and the appellant herein who were the defendants in the suit filed by the respondent – plaintiff for specific performance of the agreement in relation to the suit flat. The trial court by its judgment had decreed the suit in favour of the plaintiff holding that the plaintiffs – respondents are entitled for specific performance of the agreement and consequently for

the delivery of possession of the suit flat.

2. The learned Single Judge, on detailed analysis of the evidence on record while confirming the findings arrived at by the trial court relating to the entitlement of the plaintiffs for specific performance of the agreement in relation to the sale of the suit flat in favour of the plaintiff, has clearly held that the appellant who had put forth the defence to the effect that he is a bona fide purchaser of the suit flat, failed to adduce any evidence to establish the defence in that regard and further that the conduct of the parties clearly disclosed that the builder had tried to illegally terminate the agreement with the plaintiff inspite of the fact that substantial amount of sale price was already paid and hardly a sum of Rs.6000/- had remained to be paid and that too, it was not on account of the plaintiff but on account of the builder himself. These findings in our considered opinion, are clearly borne out from the record and in fact the analysis of the evidence by the learned Single Judge apparently establish the same. In these circumstances , therefore, there is absolutely no case for interference in the concurrent findings arrived at by the trial court as well as by the learned Single Judge in relation to the

entitlement for specific performance of the agreement as well as failure on the part of the appellant to establish his defence that he is a bona fide purchaser.

3. In these circumstances there being no case made out for interference in the impugned judgment, the appeal is liable to be dismissed and is accordingly dismissed.

4. At this stage learned Advocate for the appellant prays for stay of the impugned order for 8 days. In our opinion there is no case for grant of stay after two courts having analyzed the case in detail and has consequently held that the plaintiff is entitled for specific performance of the agreement and the appellant having totally failed to establish his defence. Request for stay is therefore rejected.

(MRS. ROSHAN DALVI J.) (R.M.S.KHANDEPARKAR J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE
Civil application No. 90 of 2006
in
LPA No. 68 of 2006

MOHUDDIN LAL MOHAMMED SIDDIQUI . .. Applicant
V/S
PANDURANG JAGANNATH THORAT
AND OTHERS ..... respondents

Mr. A. A. Mirza for appellant .
Ms. Priti Mason i/b. Bankim Desai for respondent no.3.

CORAM: R.M.S.KHANDEPARKAR
&
MRS. ROSHAN DALVI JJ.

DATE:25/04/2006

P.C.:

In view of the rejection of the L.P.A. No. 68 of 2006, this application does not survive and stands disposed of.

(MRS. ROSHAN DALVI J.) (R.M.S.KHANDEPARKAR J.)